

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTSFILED
IN CLERK'S OFFICE2004 JUN 7 P 1:13
04 :11238 MLW
U.S. DISTRICT COURT
DISTRICT OF MASS.

SACKS STORAGE, INC.,

Plaintiff,

-against-

CSX TRANSPORTATION,

Defendant.

x Civil Action No:

COMPLAINTRECEIPT # 150AMOUNT \$ 150SUMMONS ISSUED YESLOCAL RULE 4.1 1WAIVER FORM 1MCF ISSUED 1BY DPTY. CLK KOMDATE 6/7/04

Plaintiff Sacks Storage, Inc., by its attorneys, Robinson & Cole LLP, alleges upon information and belief as follows:

MAGISTRATE JUDGE RBCPARTIES

1. Plaintiff Sacks Storage, Inc. ("Sacks") is a corporation organized and existing under the laws of the Commonwealth of Massachusetts with a principal place of business at 66 Atlas Street, Worcester, Massachusetts 01601.

2. At all times relevant to this matter, Defendant CSX Transportation ("CSX") is a Florida corporation with its principal place of business at 500 Water Street, Jacksonville, Florida. CSX's agent for service of process in Massachusetts is CT Corporation, 101 Federal Street, Boston, Massachusetts 02110.

JURISDICTION AND VENUE

3. This is an action for the recovery of damages under the Interstate Commerce Act, as amended, 49 U.S.C. § 11706, which governs the liability of a rail carrier in interstate commerce. Federal Jurisdiction and venue is based on 46 U.S.C. § 11706D(i)(iii).

DIVERSITY JURISDICTIONAL ALLEGATION

4. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a), as there is complete diversity between the parties and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

5. Venue is proper pursuant to 28 U.S.C. § 1391(a), as Sacks resides in the District of Massachusetts and CSX does business there and has an agent for service of process there.

COUNT ONE
(Negligence)

6. At all times relevant to this matter, Sacks was the owner of property of 66 Atlas Street, Worcester, Massachusetts.

7. At all times relevant to this matter, Sacks was in the business of, among other things, warehousing property for its customers.

8. Sacks entered into an agreement with CSX to pick up and deliver railroad box cars at 12:30 p.m. on each day of the working week from Sacks' premises at 66 Atlas Street, Worcester, Massachusetts.

9. On October 15, 2003 at 10:30 a.m., CSX, while attempting to switch box cars, negligently struck a dock plate adjacent to the building which caused building damage in the amount of \$297,957.46.

10. Despite demand from the plaintiff that CSX reimbursed this amount regarding the damages that they caused, they have not done so to date.

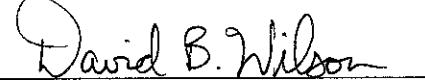
COUNT TWO
(Breach of Contract)

11. Repeat and reallege each and every allegation contained in paragraphs 1 through 10 as set forth at length herein.

12. CSX breached its contact with Sacks and Sacks's property was damaged as a result thereof in the amount of \$297,957.46.

WHEREFORE, plaintiff Sacks demands judgment in their favor against defendant CSX on two counts of the complaint in the amount of \$297,957.46, together with interest from October 15, 2003 to date, and costs and other such further relief that this Court deem just and necessary.

SACKS STORAGE, INC.,
by its attorneys,
ROBINSON & COLE LLP



David B. Wilson BBO# 548359
One Boston Place
Boston, MA 02108-4044
Tel 617-557-5900
Fax 617-557-5999
dwilson@rc.com

Dated: June 3, 2004

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTSFILED
IN CLERK'S OFFICE
2004 JUN -7 P 1:13

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY)

Sacks Storage, Inc. vs. CSX Transportation

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

*Also complete AO 120 or AO 121
for patent, trademark or copyright cases

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES NO

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? (SEE LOCAL RULE 40.1(D)).

YES NO

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION

WESTERN DIVISION

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME David B. Wilson / Robinson & Cole LLPADDRESS One Boston Place, Boston, MA 02108-4404TELEPHONE NO. Tel 617-557-5900 Fax 617-557-5999

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THIS FORM.)

I. (a) PLAINTIFFS

Sacks Storage, Inc.
66 Atlas Street
Worcester, MA 01608
(b) County of Residence of First Listed Plaintiff Worcester
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

CSX Transportation
500 Water Street
Jacksonville, Florida

County of Residence of First Listed

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)
David B. Wilson BBO#548359 / Tel 617-557-5900
Robinson & Cole LLP
One Boston Place, Boston, MA 02108-4404

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State <input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State <input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3		Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Healthcare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assalt, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury— Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input checked="" type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 446 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
			<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	FEDERAL TAXSUITS <input type="checkbox"/> 900 Appeal of Fee Determination <input type="checkbox"/> 910 Selective Service <input type="checkbox"/> 920 Economic Stabilization Act <input type="checkbox"/> 930 Environmental Matters <input type="checkbox"/> 940 Energy Allocation Act <input type="checkbox"/> 950 Freedom of Information Act <input type="checkbox"/> 960 Equal Access to Justice <input type="checkbox"/> 970 Constitutionality of State Statutes <input type="checkbox"/> 980 Other Statutory Actions

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 (specify) Transferred from another district 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

This is an action for negligence and breach of contract to recover damages under the Interstate Commerce Act, 49 U.S.C. §11706.

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** **297,957.46** **CHECK YES only if demanded in complaint:** Yes No **JURY DEMAND:** Yes No

VIII. RELATED CASE(S) (See instructions):
IF ANY
JUDG E DOCKET NUMBER

DATE **June 3 , 2004** SIGNATURE OF ATTORNEY OF RECORD
FOR OFFICE USE ONLY *David B. Wilson*

RECEIPT # AMOUNT APPLYING IFF JUDGE MAG. JUDGE